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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,225	02/11/2002	Thomas J. Coleman	278-101P-WLK	9263

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EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/071,225	COLEMAN ET AL.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-32 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-32 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 7, 12-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman (5,370, 884) in view of Donsky (6, 120,202) and Baker (wooo/19803).

In regard to claim 1, Coleman discloses a candy sucker article comprising a container configured for containing an edible product, said container including multiple compartments ("the reservoir could include separate sections of candy powder in which each section would be a different flavor" – col. 2, para. 2) accessible when the container is opened, a closure connected to the container and at least one candy sucker associated with the container. Claim 1 recites that the multiple compartments are "Simultaneously" accessible when the container is opened. Coleman does not show the structural details of the separate sections but it is noted that he shows one cover. In any case, one could argue that it is not clear whether Coleman intends to have the compartments simultaneously accessible or selectively accessible. Clearly, Coleman would have to provide one or the other mode of accessibility. Donsky can be relied on to teach that it was conventional in the packaging art to provide a multiple compartmented container with a closure with simultaneous accessibility to the compartments when the container is opened. To modify Coleman, if necessary, and

provide simultaneous accessibility for the compartment e.g. by employing a single cover for its art recognized and applicants intended function

Would therefore have been obvious. It is also noted that Donsky also discloses that more than one cap can be close the open chambers (col. 2, lines 55 plus); a clear indication that Donsky also teaches selective accessibility to multiple compartments. Baker can be relied on as further evidence of providing a container configured for containing an edible product and at least one candy sucker associated with the container. In regard to claim 2, Coleman teaches the candy sucker is packaged with the container. In regard to claim 3, Coleman discloses the closure is capable of being replaceable. In regard to claim 4, since Coleman discloses the closure threadably engages the container, then Coleman teaches a "removable seal located between the closure and the container. In regard to claim 7, Coleman teaches the candy sucker connected to the closure and also teaches the candy sucker mounted on a stick portion. Similarity, for claims 13 and 14. In regard to claim 16, Coleman teaches candy particles and that the candy sucker is of a different flavor from the product in the container (claim 18). In this regard, Coleman discloses the flavor of the sucker is changed by the powder. In regard to claims 19-23, which recite various "themes" (shapes ?) for both the candy sucker article and the candy sucker, Baker can be relied on to teach that it was conventional to provide both a sucker and a container containing a second confectionary material (to be associated with the sucker) with various fanciful, simulative shapes and designs. Once it was known to provide both sucker and article with a

theme, the particular theme selected is seen to have been an obvious matter of choice and/or design.

Claims 6,8,9 and17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Coleman et al (5,690,535), Parr (D117, 455), Perr (D117456), Kennady (2,464,515), Overland (2,500,006) and Ferguson (2,834,685).

Claim 6 differs from Coleman et al in reciting a "multiple" of suckers associated with the candy sucker article. As evidenced by Coleman et al, the two Parr references, Kennedy, Overland, and Ferguson, it was notoriously well known ~~provide~~ to provide two confections in association with each other for variety and/or novelty. To modify Coleman and provide more than one confection would therefore have been obvious, especially since Coleman teaches multiple chambers containing different flavors and Don sky teaches a multiple chambered container with multiple applicators to be dipped in and remove material from the chambers. In regard to claims 8 and 9, the art taken as a whole and especially Donsky teaches it would have been obvious to configure Coleman so that more than one sucker, attached to a closure, could be dipped into more than one compartment simultaneously. Donsky teaches a combination of multiple applicators to be dipped in multiple containers, simultaneously. To expedite prosecution by anticipating a possible urging that the references are non analogous, the references are clearly analogous since both Coleman and Donsky are directed to applicators, which are associated with a container in which the applicators are associated with a container in which the applicators are dipped in to transfer material from the containers

to the applicators. Donsky does not have to specifically teach edible substances and applicators since Coleman already teaches both. In regard to claim 17, the art taken as a whole teaches the confections can be different flavors (e.g. Kennedy).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Gallart et al (6,187,350), Silverstein (6,136,352), Schlotter et al (4,914,748) and Chan (6,120,816), all of whom teach associating a confection directly to a support/structure without a stick by employing a protrusion so that the confection is directly molded to the article. To modify Coleman and substitute one conventional confection securing means for another conventional confection securing means for its art recognized and applicants intended function would therefore have been obvious.

Claims 24-28, and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Cassai et al (D300269) and Clement (4,600,328).

Claim 24 recites that the compartments are selectively accessible. As noted in the rejection of claim 1, since Coleman teaches multiple chamber and Donsky teaches multiple chambers and multiple covers, the art taken as a whole fairly teaches it was well established to provide simultaneous or selective access to the chambers when the container is opened. Cassai et al and Clements are relied on as further evidence of providing selective access to multiple containers and to so modify the combination for its art recognized and applicants intended function would therefore have been obvious. Claims 25-28 and 30-32 are rejected for the reasons given above.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 24-28 and 30-32 above, and further in view of Coleman et al ('535), Parr ('455), Parr ('456), Kennedy ('515), Overland ('006) and Ferguson ('685) for the resons given above.

The remainder of the references cited on the USPTO 892 form are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/af
April 14, 2004

STEVE WEINSTEIN
PRIMARY EXAMINER 1761
4/6/04